

OFFICE OF THE MONITOR

NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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June 12, 2023

VIA ECF

The Honorable Laura Taylor Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Chief Judge Swain,

We write in response to the City’s June 12, 2023 letter (dkt. 545) filed with the Court earlier today regarding the Monitoring Team’s *revised* Proposed Order submitted to the Court on June 12, 2023 as Appendix B (dkt. 544) (“Monitor’s June 12, 2023 Proposed Order”). The City proposes three substantive changes¹ to the Monitor’s June 12, 2023 Proposed Order, specified in its own proposal (“City’s June 12, 2023 Proposed Order”) and to correct a typographical error in Paragraph 2 of the Monitor’s June 12, 2023 Proposed Order.²

First, the City’s June 12, 2023 Proposed Order and objection which removes the proposed requirement in the first paragraph of the Monitor’s June 12, 2023 Proposed Order,

¹ The Monitoring Team first learned of the full extent of the City and Department’s objection related to Paragraph 1 and its suggested language edit to Paragraph 7 via its letter to the Court today. The Monitoring Team did modify certain provision of its originally proposed order in light of feedback provided to the Monitoring Team on June 10, 2023. At the time the City and Department provided feedback to the Monitoring Team, it did not raise any objections or concerns with respect to Paragraph 1 of the Monitor’s June 8, 2023 proposed order or the clause “include” in Paragraph 7 of the Monitor’s June 8, 2023 proposed order.

² The Monitor has no objection to remove the extra “the” in Paragraph 2 of the Monitor’s June 12, 2023 Proposed Order as identified by the City.

“*Communicate Obligations Under the Nunez Court Orders*³ to All Department Leadership and Staff,” does not change the Monitor’s position regarding the absolute necessity for this direction from the Court to ensure that the Department abides by Consent Judgment § XX. ¶ 13, among other relevant provisions in the *Nunez* Court Orders.⁴ The City’s objection also does not change the Monitor’s position on the proposed requirement for Monitor approval of the communication,⁵ particularly given recent public statements by the Commissioner that attempt to undermine the Monitoring Team’s findings and credibility.⁶

Second, the Monitoring Team continues to believe that the language originally proposed by the Monitoring Team in paragraph 7 of the Monitor’s June 12, 2023 Proposed Order, “*Appoint Nunez Manager*,” should remain as originally drafted.⁷ Further, the Monitor also does not accept the City’s proposed change to the responsibilities of the *Nunez* Manager. The original language, that the *Nunez* Manager’s responsibilities should “be limited to [the areas covered by the *Nunez* Court Orders],” is necessary to ensure that the *Nunez* Manager is solely dedicated to the task of managing and coordinating the Department’s efforts to comply with *Nunez* Court

³ The *Nunez* Court Orders, include, but are not limited to the Consent Judgment (dkt.249), the First Remedial Order (dkt. 350), the Second Remedial Order (dkt. 398), the Third Remedial Order (dkt. 424), the Action Plan (dkt. 465) and any other relevant Orders issued by this court in the matter prior to the issuance of this Order and any Order in the future.

⁴ See also the reasoning articulated in the Monitor’s June 8, 2023 Report (dkt. 541) at pgs.15 to 38, and 43 to 46) and other filings including the Monitor’s March 16, 2022 Report (dkt. 438) at pgs. 24 to 29 and the Monitor’s June 12, 2023 letter (dkt. 544)

⁵ See the Monitor’s communications to the Court on May 26, 2023; May 31, 2023; June 8, 2023; and June 12, 2023.

⁶ See Dean Moses, EXCLUSIVE| Correction commissioner, Mayor Adams show Rikers Island security videos in effort to counter federal monitor’s claims of misdeeds, amNY, <https://www.amny.com/police-fire/rikers-island/exclusive-correction-commissioner-mayor-adams-show-rikers-island-security-videos-in-effort-to-counter-federal-monitors-claims-of-misdeeds/>.

⁷ See, for example, the Monitor’s June 12, 2023 letter to the Court (dkt. 544) at pg. 7 to 8.

Orders.⁸ Changing that phrase to “includes [the areas covered by the *Nunez* Court Orders],” as the City and Department proposed, would undercut the very objective of ensuring the Department appropriately resources and organizes its efforts to address the many requirements of the *Nunez* Court Orders. The Monitor’s June 8, 2023 Report (dkt. 541), among many other Monitor’s Reports, is rife with examples where Department staff who are tasked with *Nunez*-related responsibilities are diverted to other matters and thus cannot give their *Nunez*-related responsibilities the necessary time, attention and focus.

Finally, the Monitoring Team wishes to advise the Court that counsel for the Plaintiff Class and the Southern District of New York have advised the Monitoring Team that they consent to the entering of the Monitor’s June 12, 2023 Proposed Order.

We appreciate the Court’s attention to this matter.

Sincerely,

s/ Steve J. Martin
Steve J. Martin, *Monitor*
Anna E. Friedberg, *Deputy Monitor*

⁸ See, for example, the Monitor’s June 8, 2023 Report (dkt. 541), pgs. 20-23.